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CONSULAR CONVENTION WITH THE SOVIET UNION

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Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted
the following

REPORT

[To accompany Ex. D, 88th Cong., 2d sess.]

The Committee on Foreign Relations, to which was referred the consular convention between the United States of America and the Union of Soviet Socialist Republics, together with a protocol relating thereto, signed at Moscow on June 1, 1964 (Ex. D, 88th Cong., 2d sess.), having considered the same, reports favorably thereon without reservation and recommends that the Senate give its advice and consent to ratification thereof.

I. PURPOSE

The purpose of the convention is to regulate the consular affairs of each country in the territory of the other and to formalize the understandings of the two countries with regard to the treatment to be accorded consular officials and employees. The convention covers such matters as the status of a consular establishment, the duties and functions of consular officers, and the rights, privileges, and immunities of the consular personnel of each country stationed in the territory of the other country. The protocol, which constitutes an integral part of the convention, amplifies certain provisions of the convention.

II. BACKGROUND

Following the establishment in 1933 of diplomatic relations between the Soviet Union and the United States, Soviet consulates were opened in New York and San Francisco in 1934 and in Los Angeles in 1937. In 1941 the United States opened a consulate in Vladivostok. The Soviet Government closed its consulates in the United States in 1948 and shortly thereafter the United States closed its consulate

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in Vladivostok. Before these consulates were closed, the United States had requested and received permission to open a consulate in Leningrad but this was never done.

While there have been U.S. consulates in the Soviet Union and Soviet consulates in the United States, there has never been a consular convention between the two countries. The subject had been discussed intermittently since 1933 but preliminary discussions did not begin in earnest until 1960. A series of negotiating sessions followed, beginning in August 1963 and ending with the signing in Moscow on June 1, 1964, of the consular convention and the protocol thereto.

III. COMMITTEE ACTION

The consular convention was submitted to the Senate on June 12, 1964. The Committee on Foreign Relations held an executive hearing on July 12, 1965, at which time it heard Mr. Leonard C. Meeker, State Department Legal Adviser, and Mr. Richard H. Davis, Acting Assistant Secretary of State for European Affairs, testify in support of the convention. Mr. Meeker's statement appears as appendix I to this report.

On July 20, 1965, the committee considered the convention in executive session and decided to take it up formally. A public hearing was held on July 30, 1965, at which Secretary of State Rusk and Mr. Meeker testified. Excerpts of Mr. Rusk's opening statement are attached as appendix II to this report. The transcript of the public hearing is being published separately. The committee considered the convention at another executive session on August 3, 1965, at which it decided by voice vote to order the convention reported favorably to the Senate.

IV. PROVISIONS OF THE CONVENTION

The convention follows the pattern of other bilateral consular conventions to which the United States is a party except that it contains certain distinctive provisions regarding notification and access, in the case of citizens arrested or detained in the receiving state, and also provides for the immunity from criminal prosecution of consular officers and employees. The convention does not itself authorize the opening of consulates or specify the number of consulates which may be opened, but merely provides the legal framework for their operation should they be opened.

The convention contains three special provisions relating to the protection of American citizens and consular personnel in the Soviet Union:

1. It obliges a receiving state to notify consular officers of a sending state of the arrest or detention of a national of the sending state within 1 to 3 days from the time of arrest or detention depending on conditions of communication.

2. It provides that consular officers of the sending state may visit and communicate with a national of the sending state who is under arrest or detained in custody by the receiving state within 2 to 4 days of the arrest or detention depending on his location.

3. It states that consular officials and employees of the sending state will be immune from the criminal jurisdiction of the receiving state.

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The provisions for notification within 3 days and for access within 4 days with respect to Americans who may be arrested or detained in the Soviet Union is an unprecedented commitment for the Soviet Union to make. Hitherto, the Soviet Government has refused access to arrested persons until after the conclusion of an investigating procedure which can extend for as long as 9 months under Soviet law.

With respect to the provision on immunity from criminal prosecution for consular personnel, there are related provisions to protect against the abuse of such immunity by Soviet consular officers. These provisions specify the right of the receiving state to declare consular officers *persona non grata* and consular employees unacceptable. The convention also states that all persons enjoying immunity from criminal jurisdiction are obliged to respect the laws and regulations of the receiving state, including traffic regulations. Finally, the convention provides for the screening of all nominees for consular assignments in advance.

The convention also contains a number of safeguards against the danger of subversion. If, after ratification of the convention, the United States agrees to the opening of a Soviet consulate in the United States, the officers and employees of the consulate will be subject to the same visa screening and entry controls as officers and employees of the Soviet Embassy in Washington. They will also be subject to the same travel restrictions as those which apply to diplomatic personnel. In addition, they will be subject to the expulsion provision of the consular convention.

As a final protection against abuse of its provisions, the Convention provides for termination by either party on six months' notice.

V. CONCLUSION

The Committee on Foreign Relations has carefully considered the consular convention with the Soviet Union. The committee believes that the convention will afford significant and necessary protection to American travelers in the Soviet Union. The question of providing such protection has become increasingly important in the past few years. In 1964, about 12,000 American tourists visited the Soviet Union. By comparison, only 204 Soviet tourists visited the United States during the same period.

The provisions in the convention with regard to notification and access will be binding on the Soviet Union and the United States as soon as the convention enters into force. There will thus be an immediate benefit to the United States in terms of the added protection that can be given to American tourists in the Soviet Union. This should in turn eliminate some of the causes of friction and reduce the possibility of misunderstandings which have inhibited the development of relations between the two countries. The provisions regarding immunity from criminal jurisdiction for consular personnel will not enter into effect until consulates are established. Soviet diplomatic personnel now in the United States and U.S. diplomatic personnel now in the Soviet Union already have such immunity. The committee considers it important that, if consulates are established in the Soviet Union in the future, U.S. consular personnel be afforded similar protection.

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The committee is persuaded that the convention contains adequate measures to guard against any increased danger of subversion. In this connection, Secretary Rusk assured the committee that the Department of Justice has no objection to the convention. Secretary Rusk also assured the committee that ratification of the convention would in no way represent a change in our policy of not recognizing the forcible incorporation of Latvia, Lithuania, and Estonia into the Soviet Union.

The committee's conclusion, therefore, is that the convention would be beneficial to the United States, and it recommends that the Senate give its advice and consent to ratification.

APPENDIXES

APPENDIX I

JULY 12, 1965.

STATEMENT BY THE HONORABLE LEONARD C. MEEKER, THE LEGAL ADVISER,
DEPARTMENT OF STATE, BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
ON THE U.S.-U.S.S.R. CONSULAR CONVENTION

The Department of State believes that the U.S.-U.S.S.R. Consular Convention is clearly in the national interest of the United States and will provide important advantages to our country. We consider that, if it is ratified, the convention would constitute a useful contribution to our foreign policy objectives and our fundamental goal of world peace. By establishing procedures and standards for the conduct of the historic contacts—the movement of people, ships, and commerce—the convention will reduce the possibility of frictions and misunderstandings and establish a useful and agreed framework wherein the interests and protection of American citizens may be advanced.

The consular convention significantly improves the ability of our Government to assist American citizens in the U.S.S.R. The convention provides for a number of expanded consular services. Among these, the most important is the provision for "notification and access"; i.e., the convention specifies that the Soviet Government will notify us within 3 days of the arrest of any American citizen in the U.S.S.R. and that our officials will be given access to the arrested person within 4 days of his arrest. The convention marks the first time in its history that the U.S.S.R. has committed itself to such a provision, altering the traditional Soviet practice of refusing access to arrested persons until after the completion of the investigative period, which under Soviet law can be as long as 9 months. This provision thus offers an important protection to the thousands of U.S. citizens who travel in the U.S.S.R. each year.

Members of the committee probably recall the disappearance of Professor Barghoorn in the U.S.S.R. in 1963 when he was arrested by Soviet authorities. We did not even know of his arrest for 12 days and our officials were never allowed by the Soviet authorities to visit him in prison. If this convention had been in effect then, the Soviet authorities would have been under the obligation of notifying us of his arrest within 3 days and of granting consular access within 4. The importance of this concession by the U.S.S.R. has already been recognized by several other governments including specifically the British and Japanese who are currently negotiating consular conventions with the Soviets and hope to achieve the same access and notification provisions.

A second important provision of the convention provides immunity from the criminal jurisdiction of the receiving state for consular personnel who are nationals of the sending state. This provision will afford essential protection to American consular personnel in the Soviet Union against arbitrary police action. On the other hand, related provisions of the convention will protect against any abuse of such immunity by Soviet consular officers in the United States. These provisions specify, first of all, the right of the receiving state to declare consular personnel *persona non grata*. Thus by means of a *persona non grata* action we would be able to remove from this country any individuals whom we did not wish to act in a consular capacity.

The convention also states that all persons enjoying immunity from criminal jurisdiction are under a duty to respect the laws and regulations of the receiving state, including traffic regulations. Finally, the convention provides for practical methods of screening all nominees for consular assignments in advance.

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Neither this consular convention nor a subsequent agreement on consulates to be opened in the United States and the U.S.S.R. would result in opening the door to subversion. The convention cannot justifiably give rise to any such concern. If, subsequent to ratification of the convention, we agreed to the opening of a Soviet consulate in an American city, its employees would be subject to the same visa screening and customs controls as officers and employees of the Soviet Embassy in Washington. They would also be subject to the same travel restrictions which now apply to Soviet officials assigned to Soviet missions in the United States. Finally, they would be subject to the expulsion provision of the consular convention.

Although these distinctive provisions on notification, access, and consular immunity differ from the pattern of our previous consular conventions with other nations, the balance of this new convention follows the standard pattern of such conventions. Like the others, it is a bilateral treaty designed to regulate the activities and functions of consular establishments and their officers and employees. It contains comparable provisions on these activities and functions.

The present convention does not itself authorize the opening of any consulates in either country. It merely provides the legal framework for their operation when opened. The establishment of consulates must be agreed separately. We have in mind suggesting the establishing of a U.S. consulate general at Leningrad, the second largest city of the U.S.S.R. and the former capital of Russia. After Moscow, this is the most important city of the U.S.S.R. We do not yet know in what American city the Soviet Government may request establishment of a consulate in return for an American consulate in Leningrad.

We hope that the committee, after careful study and consideration of the convention, will agree that it provides important advantages to the conduct of our consular relations with the Soviet Union, to the protection of American citizens and their interests in that country, and that it merits your approval. I should like to conclude by recalling President Johnson's words on May 27, 1964, regarding this convention: "It is my hope that this treaty—the first bilateral treaty between the United States and the Soviet Union—will be a step forward in developing understanding between our two countries, which is so important in the continuing struggle for peace."

APPENDIX II

JULY 30, 1965.

EXCERPTS OF STATEMENT BY THE HONORABLE DEAN RUSK, SECRETARY OF STATE,
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE

The consular convention will help to normalize further our relations with the U.S.S.R. It will help to reduce sources of friction between us. It will encourage the Soviet Union to conduct itself like other responsible nations in its treatment of foreigners and foreign interests within its territory. It will place obligations on the Soviet authorities to respect some of the civil rights cherished by democratic nations.

Now let me turn to the important specific provisions of the convention and to the benefits which it will provide for American citizens.

Apart from distinctive provisions on notification, access, and consular immunity which differ from the pattern of our previous consular conventions, the convention follows the standard pattern of such conventions. Like others it is a bilateral treaty designed to regulate the activities and functions of consular establishments and their officers and employees. The provisions governing these activities and functions are comparable to those in our conventions with other countries.

In my view this convention, which was carefully negotiated over an 8-month period, is advantageous to our national interest. The convention, if ratified, will, of course, be a document of high value to both countries. It will provide much needed regularization of traditional contacts between the two countries, affecting the flow of people, ships, and—of growing importance—commerce. Conversely it will supply a reference point to reduce unnecessary misunderstanding. Soviet and American ways of doing things are often quite unlike. A common set of ground rules is desirable. Since many more Americans visit the U.S.S.R. than Soviet citizens visit the United States, the convention has special importance for the United States. (About 12,000 American tourists visited the U.S.S.R. last year while only 201 Soviet tourists came to the United States.)

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Because we value so highly the protection of individual rights, the convention's provisions on notification and access have particular significance. These clauses should improve markedly the ability of the Department of State to protect and assist the thousands of Americans who now visit the U.S.S.R. as tourists, on business, or under the exchange program. The current practice in the Soviet Union is to refuse access to arrested persons until after the completion of investigation, which under Soviet law can extend for 9 months.

You probably recall the disappearance of Prof. Frederick Barghoorn in the U.S.S.R. in 1963. Only after 12 days did our Embassy in Moscow learn of his arrest, and the Soviet authorities never allowed our officials to visit him in prison. If this convention had been in effect in 1963, the Soviet authorities would have been obliged to notify us of his arrest within 3 days and to grant us consular access within 4 days.

The U.S.S.R. has never before given so specific a guarantee on access. Other governments recognize the importance of the notification and access provision in the U.S.-U.S.S.R. convention and have indicated an interest in obtaining these benefits for themselves. The Japanese are currently preparing to negotiate a consular convention with the Soviets and hope to achieve the same access and notification provisions. The British are in the final stages of negotiating a consular convention with the U.S.S.R. which incorporates these safeguards.

As an additional measure of protection, which we regard as important, the convention contains a special provision on immunity for consular personnel. Under this provision, they will be immune from criminal prosecution. Related provisions of the convention will protect against abuse of such immunity by Soviet consular officers. These provisions specify, first of all, the right of the receiving state to declare consular personnel *persona non grata*. Thus by means of a *persona non grata* action we would be able to remove from this country any individual who abused his official privileges. The convention also states that all persons enjoying immunity from criminal jurisdiction are obliged to respect the laws and regulations of the receiving state, including traffic regulations. Finally the convention provides for screening all nominees for consular assignments in advance, so that we would not have to accept as a consul any Soviet citizen to whom we objected.

The U.S.-U.S.S.R. Consular Convention, I wish to stress, does not itself authorize the opening of any consulates in either country; it merely provides a legal framework for their operation when opened. If the present convention is ratified, the Department of State plans to discuss with Soviet representatives the possibility of opening at least one American consulate in the Soviet Union. Leningrad, the second largest city in the Soviet Union, is the most attractive of several possible sites. The U.S.S.R. has not indicated where it might like to open a consulate in this country. In any discussion of the establishment of consulates we shall be sure that we receive at least as advantageous a location as we give.

My remarks would not be complete if I did not invite the committee's attention to the question whether this convention and any consulates established subsequently would result in opening the door to Communist espionage and subversion. This possibility was, of course, carefully considered in consultation with other responsible agencies of our Government before we signed the consular convention. We are satisfied that the convention would not materially affect this problem. If, after ratification of the convention, we agree to the opening of a Soviet consulate in an American city, its employees will be subject to the same visa-screening and entry controls as officers and employees of the Soviet Embassy in Washington. They would also be subject to the same travel restrictions as now apply to Soviet officials assigned to Soviet missions in the United States. They would be subject to the expulsion provision of the consular convention. Finally, the relatively small number of consular officials would make little difference in the total of Soviet citizens in the United States possessing immunity from criminal jurisdiction. As of July 1, 1965, there were 847 Soviet citizens residing in the United States, of whom 249 officials and 150 dependents had diplomatic immunity.

I think I have now covered the most significant aspects of this convention.

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